

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Leighton  
Serial Number: 10/779,691  
Filing Date: February 18, 2004  
Art Unit: 2152  
Examiner: Dailey, Thomas J.  
For: **Network performance monitoring  
in a content delivery service**

Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY**

This paper is submitted in response to the final Office action mailed July 18, 2008. An extension of time is filed concurrently to extend the response deadline through January 21, 2009. Both January 19<sup>th</sup> and 20<sup>th</sup> are federal holidays.

Reconsideration and favorable action are respectfully requested for the reasons set forth below.

**REMARKS**

Claims 1-8 are rejected under 35 U.S.C. § 102(e) as being anticipated by Skene et al, U.S. Publication No. 2001/0052016. With respect, this rejection is traversed for the reasons set forth below.

Skene is not prior art. As stated on page 1 of the specification here, the subject application is a continuation of Serial No. 09/620,658, filed July 20, 2000. Skene, the publication, is based on Serial No. 09/788,281, filed February 16, 2001. Thus, U.S. Publication No. 2001/0052016 itself is not prior art under 35 U.S.C. § 102(e).